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Forum: External Relations (EB1)

Issue: The question of the South China Sea ruling

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Introduction

The South China Sea is a peripheral sea that is part of the Pacific Ocean, surrounding an area of around 3,500,000 square kilometers. It is of major importance for the Asia-Pacific region. The area is host to one-third of the world's maritime commerce and it is believed to have large, untouched oil and natural gas reserves. This makes the area subject of many territorial disputes and conflict. The territorial disputes over these water are the primary source of tension within the region. The superpower China has been one of the major actors of conflict along with its regional neighbors such as the Philippines.

The disputed islands and other territories were defined as terra nullius, land masses which are not subject to the sovereignty of any state, by most regional inhabitants until the prospect of natural resources such as petroleum and natural gas was discovered. China, the most powerful party in the region, has set up major efforts; in order to legitimize its claims over the territory.

The three main disputed regions that impact the international law and policy can be summed up as:

1. Japan's claim over the Senkaku/Diaoyudao islands
2. Vietnam's claim over Paracel islands, which China has occupied in 1974 and controls ever since
3. the Spratly Islands that have been claimed by China, Vietnam, Malaysia, Brunei, Taiwan and the Philippines and where military presence is observed by all except Brunei.

The islands, unlike most territorial disputes, do not only carry influential and geopolitical weight, but they are also sources of great natural resources. According to the World Bank, the South China Sea holds billions of dollars worth of oil and natural gas reserves, which may hold much needed economic opportunity for smaller nations like Malaysia, the Philippines, and Vietnam, and would provide stability to China's large, growing economy.

The presence of the United States by its Freedom of Navigation Operations (FONOP) missions to defend its regional partners and to halt China's efforts to increase its own influence has added to the tensions in the region.

An important turning point in the issue was when the Philippines launched a case against China on the issue. In 2013, the Philippines applied to The Permanent Court of Arbitration to oppose the claims of China in the South China Sea, after China seized control of a reef in Scarborough shoal, which is located at a mere 140 nautical miles from the frontier of the Philippines. After three years of investigation, the court was able to collect 4000 pages of proof, which served the jury during the arbitral process. At the end, the verdict of 495 pages of the PCA was the worst imaginable scenario for China. The court decided that the historical rights that were claimed by China weren't justified and thus didn't have legal weight. The court supported the Philippines in nearly all of their oppositions. But China refuses the verdict.

In practice, the decisions of the PCA are rarely applied because the authority of the court is contested for different reasons. China boycotts the sentence of the court by refusing to recognize it's competence. It's argument is as follows: We can only decide on territorial zones if we are at accord on the proprietary of a land. The judges haven't been able to decide on this topic as the Law of the Sea doesn't concern the islands



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considered land. And as we don't know who owns this land, we can't pronounce on the surround zones.

The ruling has been a turning point in the dispute, and international community now contests the legitimacy of China's actions.

Definition of Key Terms

Freedom of Navigation Operations (FONOPs): FONOPS are naval mission conducted by the United States, which designed to challenge excessive maritime claims in the South China Sea. Since October 2015, the United States has launched three Freedom of Navigation Operations.

Terra Nullius: Terra Nullius in Latin is an expression that means "nobody's land", which is used in international law to describe landmass or territories which has never been subject to the sovereignty of any state, or over which any prior nation has expressly or implicitly renounced sovereignty.

9 Dash Line: The Nine-Dash Line as the "10-dash line" and the "11-dash line" is the differentiation line used initially by the government of the Republic of China (Taiwan) and then also by the People's Republic of China, for their claims of the major part of the South China Sea. The contested region in the South China Sea includes the Paracel Islands, the Spratly Islands, and other areas including the Pratas Islands, the Macclesfield Bank and the Scarborough Shoal. On 12 July 2016, an arbitral tribunal in the Permanent Court of Arbitration in the Hague ruled that China has no legal foundation to claim "historic rights" within its nine-dash line in a case brought by the Philippines. The ruling was rejected by the Chinese government.

Exclusive Economic Zone (EEZ): An EEZ is a sea zone defined by the United Nations Convention on the Law of the Sea over which a country has special rights regarding the exploration and use of marine resources, including energy production from water and wind and the exploration and the processing of the natural resources within the discussed region.

International Waters: The areas of the sea that are not under the jurisdiction of any country. International waters have no sovereignty, ergo is "Mare Liberum" as no state controls it. All states have the freedom of fishing, trade, transportation, over flight, laying cables, pipelines and research.

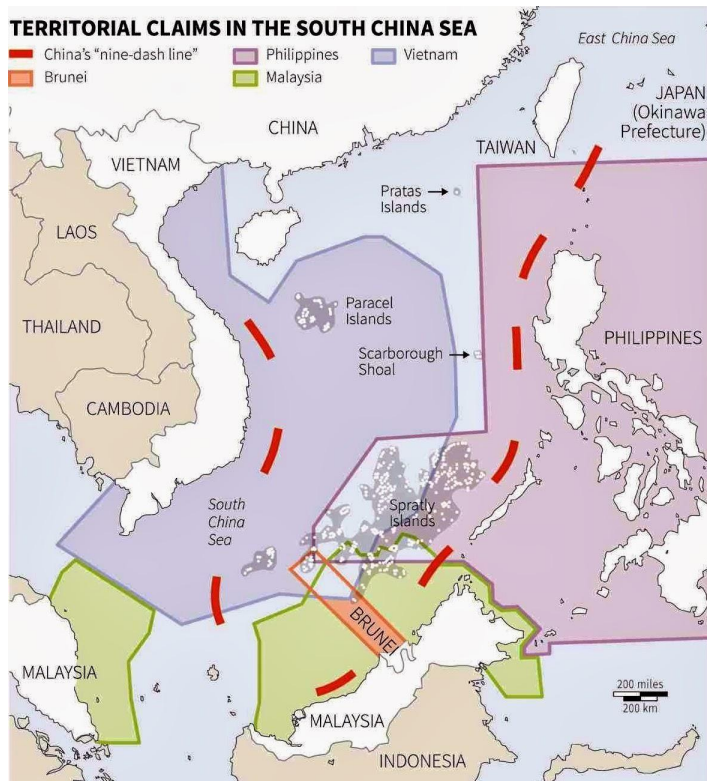
Mare Liberum: Free sea. A body of navigable water that is free from all jurisdiction and control to which all nations have unrestricted access.

Confidence Building Measures (CBM): CBMs are planned procedures to prevent hostilities, to avert escalation, to reduce military tension, and to build mutual trust between countries. Confidence building is a term heavily referred in diplomatic language as well as in military strategy. Confidence building is used to enhance cooperation often on issues regarding conflicts of interest or in scenarios such as the South China Sea where both conflicts of and interest conflict with complexity and politics. It is a strategy that takes a more calmer, slower approach and analyzes the whole situation for the "best" option.

United Nations Convention on the Law of the Sea (UNCLOS): It is the main international treaty which draws the main guidelines regarding the usage of the seas and also the natural resources within it. Although not every state is a ratifier of it, the main rules of it have the utmost importance in understanding the roles and rights of the states in the South China Sea dispute. The agreement defines territorial waters, continental



General Overview



The South China Sea is a part of the Mediterranean Sea that involves Malaysia, Brunei, Indonesia, Philippines, China and Vietnam and the disputes in the region consist of these parties as well. The disputes have existed for a long time now making it inevitable to underestimate historical references. The cornerstones of the dispute may be analyzed as natural resources, fisheries and trade, sovereignty, history and culture and international law including the UNCLOS. The states all claim different rights in this vitally important body of water mainly because of the natural resources present in the area, focusing on rights such as drilling, fisheries, trade. The role of the United Nations in this conflict can be seen as providing the international atmosphere for peaceful negotiations to prevent any kind of conflict from happening.

A Brief History

Regarding the history of the disputed islands in the South China Sea, it is essential to note that every party that is included claims different rights, thus so far although they have all tried to demonstrate historical ties with the region, the history of the islands is still disputed.

One of the most important historical events which China uses to claim historical ties with the Spratly Islands and the South China Sea is the Sino-French War of 1887. At the end of this war China was given the right of full sovereignty in Spratly and the Paracel Islands. However Vietnam, which was a French colony back then, had no right according to the agreement. Today, the Paracel Islands are disputed between Vietnam and China, thus PRC uses this historical event and agreement as a basis for their claims over the territories.

For the first part of the 20th century and during both of the world wars there were no major disputes in the region that can be attributed to the today's South China Sea dispute. During the World War 2, the region of South China Sea was majorly dominated by Japan as a part of their expansionist policy. However, after their defeat, they lost the domination that they had in the seas. This occasion was the perfect opportunity for China to extend its rights over the South China Sea, thus they created the nine dash line, which represents the region that is claimed by China. During that time, the parties were not aware of the rich natural resources present in the area, thus when China established control in islands of the Spratly, the



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Woody Island and part of the Paracel Islands chain in 1947, none of them took concrete action to change the situation. The Vietnam's -and the France's- priority was the escalating war in Vietnam.

During the second half of the century, interest in the region substantially increased. In the 1950s China and Taiwan increased their permanent presence on the islands. However, the real tension started to escalate during the 1970s, when the presence of rich oil resources in the area was discovered. After this essential discovery, Philippines became the first country to act with the intention of getting their share from these resources. Their moves were followed by China, when they invaded several islands. The Battle of the Paracel Islands, one of the most notable military conflicts of the decade in the South China Sea, took place in 1974. In this battle several Vietnamese soldiers were killed by China, followed by the sinking of a corvette as well. This incident caused both South and North Vietnam to accelerate their moves with the aim of gaining control in the unoccupied islands of the South China Sea.

The tensions rose again in 1988 when China occupied the Johnson Reef and also again moved to the Spratlys islands with the intention of military occupation. Several Vietnamese soldiers were again killed in this incident. In 1995, when Philippines obtained privileges regarding oil, China built bunkers in the Mischief Reef, which again caused tension.

21st Century

In 2002, the Association of Southeast Asian Countries (ASEAN) and People's Republic of China agreed upon signing the Declaration on the Conduct of Parties in the South China Sea. This was a major step for bringing the political tension caused by the South China Sea dispute to an end. With this declaration both parties were accepting "to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner."

This declaration seemed to be proving to be successful for a while, however after some time the parties began to engage in demarches and notes verbales, meaning that the political tension was rising as different leaders started to react in the form of statements, if not military offensives or occupations. In 2009, Malaysia and Vietnam sent a submission to the Commission on the Limits of the Continental Shelf to clarify what their claims regarding the usage of the water body and the natural resources within it were. However, this act got reaction from the international actors. People's Republic of China responded by submitting the map of their 'nine-dash line', a very important step in the conflict.

After the submission of the map of the nine-dash line, the conflict now had another aspects to consider as it was now obvious that China's hope for the future of the region was to include nearly 90 percent of the South China Sea to the sphere of influence of their sovereignty. In 2012, China launched a military offensive to take the Scarborough Shoal from the Philippines. Although China and Philippines had agreed to withdraw their forces from the Scarborough Shoal after a negotiation period of two months, China did not comply with this agreement and did not withdraw the soldiers back, despite the fact that the Philippines had acted according to the agreement.

After this move of China, an arbitration case against the People's Republic of China was filed by the Philippines under the United Nations Convention on the Law of Seas in the Permanent Court of Arbitration in 2013. The convention, which defines the rights and responsibilities of the states regarding the usage of the water bodies of the world, had come into force in 1994 and both states were ratifiers of it at that time. In the case, the main aim was not to solve the disputes related with sovereignty, rather it was to clarify the status of the maritime entities in the South China Sea. During the ruling process of the court, China also took a step to establish an Air Defense Identification Zone (ADIZ) in the East China Sea, causing the tensions to rise once again.

The court unanimously ruled in favour of Philippines, stating that the claims of China of having



historical ties with the region was not supported well enough. People's Republic of China didn't participate in the proceedings of the court and also do not recognize the decision that was taken, which favours the nations of Philippines, as well as the other countries affected by the issue as well.

Up to today, the rulings of the court could not be used due to the fact that they are not accepted by China. The current situation is that the tense political atmosphere is present in the region, and minor atrocities are taking place in the South China Sea, while the parties could not agree upon a way to distribute the usage of the oil and natural gas, the fisheries and the potential income attributed to the usage of the international tradeways.

Another important point to keep in mind is that the People's Republic of China has been building up artificial islands in the region; to claim more land, dominance in the region and a legal basis for making the international community accept the 'nine-dash line'. On the artificial islands that they created constructions of projects such as airstrips are also present. This movements have been highly criticized by the nations of the Southern Asia and the USA as well.



The Ruling

The South China Sea, as a part of the Pacific Ocean lies enclosed by the countries China, Vietnam, Malaysia, Brunei, Philippines and Taiwan which all possess maritime and territorial claims over the region. the ruling specifically concerns China and The Philippines, and is, to this day, debated on. The case brought to the PCA by the Republic of the Philippines expressed concerns with certain aspects of the claims made by China with its Nine Dash line. The Nine Dash Line is the point of referral for the territorial claims of China. It was first used by the Republic of China

(Taiwan) and is presently employed by The People's Republic of China. It intervenes with the EEZ's of Vietnam, Malaysia, Brunei and the Philippines, and has been established following claims of historical rights by China, of which the source and legitimacy rest unclear. This is precisely why the Philippines decided to contend the claim, stating it violates the UNCLOS (United Nations Convention on the Law of the Sea) by disregarding countries' EEZ's. It also claimed the structures unable to sustain life would not be able to acquire continental shelves, such as the majority of the Spratly Islands. The court took on 7 of the claims made (Nos. 1, 2, 5, 8, 9, 12, and 14) and ultimately decided that 'China has "no historical rights" based on the "nine-dash line" map'. The produced award of nearly 500 pages was very well argued and the proof provided was concrete. This is why China's opposition to the ruling was seen groundless. They have proven unable to state a valid point of objection but have rather resolved to claiming 'the ill-founded ruling is naturally null and void'. The Ruling has generated diplomatic pressure on China to scale-down or even completely halt military action in the area. The ruling does not only prove beneficiary to the Philippines but to all of the bordering countries of the South China Sea except China. Paul Reichler, of the law firm Foley Hoag LLP, who who coordinated the Philippines' legal team, said: "The tribunal's ruling not only benefits the Philippines, it also benefits other states bordering the South China Sea like Indonesia, Malaysia and Vietnam. If China's nine-dash line is invalid as to the Philippines, it is equally invalid to those states and, indeed, the rest of the international community."

Timeline of Major Events



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1948: Nine-dash line map is first introduced by the Government of China, stating the territorial claims of China in the South China Sea.

1969: An UNECA report is published which contains the possible natural resources that are present in the region, most notably oil and natural gas.

1974: China occupies the Paracel Islands, the Battle of the Paracel Islands in which Vietnamese soldiers were killed takes place.

1988: China occupied the Johnson Reef and moved to the Spratly Islands as well.

1994: The United Nations Convention on the Law of the Sea (UNCLOS) goes into effect after 60 countries ratify it.

1995: China takes control of the Mischief Reef and states that the huts that they built would serve for the fisherman. The Philippines protest the incident via ASEAN.

1998: China sinks Vietnamese ships in the region of the Spratly Islands, which had the potential of escalating military conflict.

2002: The Declaration on the Conduct of Parties in the South China Sea is signed by the ASEAN countries and China.

2009: Vietnam and Malaysia apply for extended continental shelves, which would enable their access to more natural resources.

2009: As a response to the prior application, China submits the map of the "nine-dash line", protested by the other nations.

2012: China launches a military offensive to the Scarborough Shoal, taking the effective control of it. The tension between a Philippine vessel and a Chinese fishing boat triggers the event.

2013: The Philippines file a case against China after the developments in the Scarborough Shoal in the Permanent Court of Arbitration (PCA) in The Hague under the UNCLOS.

2016: The PCA rules in favor of the Philippines. China does not participate in the proceedings and does not recognize the validity of the result.

Major Countries and Organizations Involved

People's Republic of China (PRC)

China is the most influential party in the South China Sea dispute. Their claim regarding the territorial disputes is the "nine dash line", which they submitted stating that they have historical ties with the region dating back to the Chinese fisherman and explorers of the 15th century. Its military presence in the islands is considerably higher than the other parties and the state also started to build artificial islands in the sea to gain more legal rights and territory, a move that has been highly criticized by the international community. The PCA ruled that the nine-dash line had no legal basis, however China did not accept this decision and has become more aggressive. Although it seeks for a peaceful ending to the conflict, the fact that the South China Sea is the most important geographical location for the country's self-defense and also the international trade relations of it (specifically important for the growing economy of China and the population since they are dependent to imports for alimentation) should not be ignored.

Malaysia



Malaysia is another actor which claims territory in the South China Sea, as according to the UNCLOS a part of their Exclusive Economic Zone falls into the disputed territory as well. They are not concerned with the Spratlys or the Paracel islands majorly, specifically they state that a small number of islands in the Spratlys are a part of their EEZ. Thus, they can be considered as a relatively minor actor in the South China Sea Dispute.

Vietnam

Vietnam is another country which is highly affected by the claims and actions of China in the South China Sea, especially the new requirement of China which states that foreign vessels must have China's permission before they can navigate through the South China Sea. The country looks after peaceful solutions that are in accordance with the international law.

Vietnam also has documents showing that their country ruled both the Paracel and Spratly islands since the 17th century and strictly objects to China's historical claims. After China, it has the biggest military presence in the region as it was previously offended in incidents that included casualties of Vietnamese soldiers. It has also took part in activities to reclaim land following protests in the country regarding the South China Sea problem, however was not successful due to China's policy.

Philippines

The Philippines is another country which is affected by the China's actions. It thinks that the government of China can not control the South China Sea as the only power and an agreement has to be made among the countries which has claims in the disputed territory. As a major claimant in the dispute, and highly affected by its geographical position with the Spratly islands, the Philippines was the country to file the case in the PCA against China under the UNCLOS.

United States of America (USA)

The United States of America wants to protect the allies that they have in the region in the dispute but also do not want to have a major political conflict with a power like China. In 2014, it signed a defense treaty with the Philippines, the Enhanced Defence Cooperation Agreement. The US strengthening cooperation with the ASEAN states has made some parties question the future US interests in the South China Sea, however they have stated that the US is trying to bring a peaceful end to the situation in the South China Sea in accordance with the international law. The carrier battle group patrols and the B-52 flyover cases of December 2015 also distressed the international community regarding their policy.

Association of Southeast Asian Countries (ASEAN)

The Association of Southeast Asian Countries (ASEAN) was established in 1967 with the purposes of increasing economic growth, promoting regional peace and supporting active international collaboration in various fields and include Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam as members. This organization is essential in the South China Sea dispute as it can facilitate the international talks and agreements to take place with China.

Previous Attempts to Solve the Issue

The two previous major attempts to solve this issue can be regarded as the The Declaration on the Conduct of Parties in the South China Sea of 2002 and the arbitration case against China under the UNCLOS, filed by the Philippines in the Permanent Court for Arbitration.

As stated before, the arbitration case was brought to the Permanent Court of Arbitration in 2013 by



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the Philippines, concerning the legal liability of the China's nine-dash line. It is important to note that the Permanent Court of Arbitration is not as powerful as the International Court of Justice (ICJ) as it does not have the power of the Article 94 of the UN Charter which states that: "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment." However, acting against the findings of it must still be regarded as a violation of the international law.

The Philippines claimed that the China's claims in the South China Sea actually violated the UNCLOS, while China stated that the dispute was because of sovereignty and it was not under the topics of an arbitration court since it was not about the exploitation rights. The decisions that were taken in favour of the Philippines state that the claims of China regarding the usage of nine-dash line in the ruling of the South China Sea are not viable, and are actually against the international law. China does not accept the rulings of this court, and did not take place in the proceedings.

A very important past solution attempt was the Declaration on the Conduct of Parties in the South China Sea which was adopted in 2002. It was signed by the Association of the Southeast Asian Nations and the People's Republic of China and is regarded as the first incident in which China was accessible to international cooperation regarding the South China Sea dispute. In the treaty the parties accepted to 'resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations.' and 'exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability'. However, it could not prove to be a permanent solution regarding the dispute.

Possible Solutions

The key to bringing the dispute to a peaceful ending is to understand why the South China Sea is so important for the People's Republic of China. If the international agreement or talks do not look after China's benefits regarding the area as well, the country will not be accepting any kind of decision taken or ruling that is made, just like the case of the Permanent Court for Arbitration. Classifying the dispute as against international peace and security and using the powers of the United Nations Security Council could also be an idea, but China and Russia would use their rights of vetoing in such a case, preventing any kind of decision from being taken.

Therefore, it can be interpreted that the delegates must be focusing on the creation of an international debate atmosphere and also the creation of guidelines for the usage of natural resources in the area, and the resolvment of the sovereignty disputes over the islands in the South China Sea. While doing so, the guidelines must include principles which protect the rights of both parties and the compromises have to be made by both of the claimants. The Declaration on the Conduct of Parties in the South China Sea is a very important document when it comes to creating a permanent solution proposal, therefore the principles of it can be used with alterations to make such an agreement lasting this time. Intensifying the role of the ASEAN countries to improve international cooperation is also essential.

The foreign policy of the United States of America and the European nations is also vital for the resolvment of the issue, however these countries preferred not to take such strict policies regarding the dispute as they did not want to face opposition from a superpower like China. Rather, they stated that the dispute must be concluded in accordance with the international law, indicating that the participation of a third party country or organization to the international talks regarding the South China Sea as an intermediary



As short term solutions, it should never be forgotten that the artificial islands that are being built by China must be addressed in a solution proposal while also there has to be steps taken for the prevention of further military conflict in the region in a resolution. The effects of the solutions and the dispute on the environment can also be considered.

Useful Links For Further Research

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